Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1031

DANIEL SIFTON, ERIC SIFTON, and LORI SIFTON, minors, BY ELSIE CAROLINE SIFTON and ASHFORD DAVID SIFTON, THEIR GUARDIANS,

Petitioners,

vs.

RICHARD THOMAS MURPHY; CURTIS PODRATZ; and DOES 1 through 20, Inclusive,

Respondents.

FREDERICK CHRISTIAN FRIES,

Petitioner,

vs.

CITY OF INGLEWOOD, STEVE COMBS, CHUCK NORRIS KARATE STUDIOS, INC., DOES 1 through 20, Inclusive.

Respondents.

APPENDICES TO PETITION FOR WRIT OF CERTIORARI

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Vol. II

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CALIFORNIA SUPREME COURT'S DENIAL OF HEARING IN SIFTON VS. MURPHY.

US Sup Ct

CLERK'S OFFICE. SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

OCT 23 1975

I have this day filed Order

In re: 2 Civ. *No.* 44073

Sifton

MURPHY, US

County of Ventura

Respectfully,

G. E. BISHEL
Clerk

31248-877 2-75 3M OSP

APPENDIX B

CALIFORNIA SUPREME COURT'S DENIAL OF HEARING IN FRIES VS. CITY OF INGLEWOOD.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102
OCT 23 1975

I have this day filed Order

In re: 2 Civ. *No.* 45104

Fries

vs.

City of Inglewood

Respectfully,

G. E. BISHEL
Clerk

31248-877 2-75 3M OSP

APPENDIX C

APPLICABLE CALIFORNIA GOVERNMENT CODE SECTIONS:

§ 905. Claims for money or damages against local public entities; law governing presentation; exceptions. There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

(c) Claims by public employees for fees, salaries, wages, mileage or other expenses and allowances.

(d) Claims for which the workmen's compensation authorized by Division 4 (commencing with Section 3201) of the Labor Code

is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the State or by a state department or agency or by another local public entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including but not limited to claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or

interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 (Commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(l) Claims governed by the Pedestrian Mall Law of 1960, Part 1 (commencing with Section 11000) of Division 13 of the Streets and Highways Code. (Added Stats. 1963, c. 1715, p. 3372, § 1.)

§ 910. Contents of Claim. A claim shall be presented by the claimant or by a person acting on his behalf and shall show:

(a) The name and post office address of the claimant;

(b) The post office address to which the person presenting the claim desires notice to be sent;

(c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;

(d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;

(e) The name or names of the public employee or employees causing the injury, damage, or loss if known; and

(f) The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. (Added Stats. 1963, c. 1715, p. 3374, § 1, as amended Stats. 1965, c. 653, p. 2010, §1.)

§ 911.2 Time for presentation of claims. A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than the 100th day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than one year after the accrual of the cause of action. (Added Stats. 1963, c. 1715, p. 3372, § 1.)

§ 911.4 Application to present late claim; one year limitation; statement of reasons; tolling of limitations

(a) When a claim that is required by Section 911.2 to be presented not later than the

100th day after the accrual of the cause of action is not presented within such time, a written application may be made to the public entity for leave to present such claim.

(b) The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) of this chapter within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application. In computing the one-year period under this subdivision, time during which the person who sustained the alleged injury, damage, or loss is a minor shall be counted, but the time during which he is mentally incapacitated and does not have a guardian or a conservator of his person shall not be counted. (Amended by Stats. 1970, c. 411, p. 822, § 1.)

§ 915. Presentation to local public entity. (a) A claim, any amendment thereto, or an application to the public entity for leave to present a late claim shall be presented to a local public entity by:

(1) Delivering it to the clerk, secretary or auditor thereof; or

(2) Mailing it to such clerk, secretary or auditor or to the governing body at its principal office.

(b) A claim, any amendment thereto, or an application for leave to file a late claim shall be presented to the state by:

(1) Delivering it to an office of the State Board of Control; or

(2) Mailing it to the State Board of Control at its principal office.

(c) A claim, amendment or application shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if it is actually received by the clerk, secretary, auditor or board of the local public entity, or is actually received at an office of the State Board of Control, within the time prescribed for presentation thereof.

(d) A claim, amendment or application shall be deemed to have been presented in compliance with this section to a public agency as defined in Section 53050 if it is delivered or mailed within the time prescribed for presentation thereof in conformity with the information contained in the statement in the Roster of Public Agencies pertaining to that public agency which is on file at the time the claim, amendment or application is delivered or mailed. As used in this subdivision, "statement in the Roster of Public Agencies" means the statement or amended statement in the Roster of Public Agencies in the office of the Secretary of State or in the office of the county clerk of any county

in which such statement or amended statement is on file. (Added Stats. 1963, c. 1715, p. 3372, § 1, as amended Stats. 1965, c. 653, p. 2012, § 8.)

§ 945.4 Necessity of written claim acted upon by board or deemed to have been rejected. Except as provided in Sections 946.4 and 946.6, no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division. (Added Stats. 1963, c. 1715, p. 3383, § 2, as amended Stats. 1965, c. 653, p. 2014, § 17.)

§ 945.6 Limitation of actions on claims required to be presented in accordance with chapters 1 and 2 of part 3; persons imprisoned in state prison. (a) Except as provided in Sections 946.4 and 946.6 and subject to subdivision (b) of this section, any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be

commenced within six months after the date the claim is acted upon by the board, or is deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.

(b) When a person is unable to commence a suit on a cause of action described in subdivision (a) within the time prescribed in that subdivision because he has been sentenced to imprisonment in a state prison, the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be extended if the public entity establishes that the plaintiff failed to make a reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (a).

(c) A person sentenced to imprisonment in a state prison may not commence a suit on a cause of action described in subdivision (a) unless he presented a claim in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division. (Added Stats. 1963, c. 1715, p. 3383, § 2, as amended Stats. 1965. c. 653, p. 2015, § 19.)

§ 946.6 Denial of application for leave to present claim; relief from provisions of section 945.4; place of filing petition. (a) Where an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from the provisions of Section 945.4. The proper court for filing the petition is a court which would be a competent court for the trial of an action on the cause of action to which the claim relates and which is located in a county or judicial district which would be a proper place for the trial of such action, and if the petition is filed in a court which is not a proper court for the determination of the matter, the court, on motion of any party, shall transfer the proceeding to a proper court.

(b) The petiton must show (1) that application was made to the board under Section 911.4 and was denied or deemed denied, (2) the reason for failure to present the claim within the time limit specified in Section 911.2 and (3) the information required by Section 910. The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6.

(c) The court shall relieve the petitioner from the provisions of Section 945.4 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed one year after

the accrual of the cause of action and was denied or deemed denied pursuant to Section 911.6 and that:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect unless the public entity establishes that it would be prejudiced if the court relieves the petitioner from the provisions of Section 945.4; or

(2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

(d) A copy of the petition and a written notice of the time and place of hearing thereof shall be served not less than 10 days before the hearing on (1) the clerk or secretary or board of the local public entity, if the respondent is a local public entity, or (2) the State Board of Control or its secretary, if the respondent is the state.

(e) The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petitiin, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.

(f) If the court makes an order relieving the petitioner from the provisions of Section 945.4, suit on the cause of action to which the claim relates must be filed in such court within 30 days thereafter. (Added Stats. 1965, c. 653, p. 2016, § 22.)

APPENDIX D

OPINION OF COURT OF APPEAL - FRIES V. COMBS.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

CREDERICK CHRISTIAN FRIES, Plaintiff and Appellant, v. STEVEN COMBS, Defendant and Respondent.	2D CIVIL NO. 45104 (Sup. Ct. No. C 68624) FILED June 30, 1975

Frederick Fries petitioned the superior court for relief from his statutory obligation to present a claim against the City of Inglewood before suing the city for personal injuries sustained during a karate class in a city park. The city had refused Fries' claim filed 33 days after the close of the 100-day filing period. The court denied the petition for relief and also

sustained a demurrer to the complaint by another defendant, Steven Combs, a karate instructor and city employee. Fries appeals the subsequent judgments of dismissal.

THE STATUTES

The California tort claims statutes provide that a plaintiff may bring a personal injury action against a governmental entity if plaintiff presents his claim to the entity within 100 days of the accrual of his cause of action and the entity denies the claim. (Gov. Code, §§ 911.2 and 945.4.) If plaintiff does not timely file a claim, he may within a reasonable time not exceeding one year apply to the entity for leave to file a late claim. (Gov. Code, §§ 911.4 and 911.6.) If the entity denies the application to file a late claim, plaintiff within six months may petition the court for relief from the claim-filing requirement. (Gov. Code, § 946.6(a).) If the court finds plaintiff applied to file a late claim within a reasonable time from the accrual of his cause of action and that his failure to file a timely claim resulted from mistake, inadvertence, surprise, or excusable neglect, the court shall relieve plaintiff, unless it finds the public entity would be prejudiced by such relief. (Gov. Code, § 946.6(c).)

THE FACTS

Affidavits of Fries and his attorney in support of the petition state that on 24 October 1972 Fries attended a kraate class conducted by the city in a city park. The karate instructor, Combs, injured Fries' face, nose and mouth and damaged his dental appliance. Four city employees, including Combs and two persons who treated Fries' injuries, were informed of the incident on the day it occurred. On 21 February 1973 Fries filed an accident report with another city employee at the park. The next day the city clerk notified Fries that he would have to file a claim.

Uncertain of his legal rights, Fries consulted an attorney. He had "delayed consulting an attorney because of the pain of [his] injuries and the difficulty in obtaining a doctor's appointment for treatment. Also, during this period of time [he] lost [his] automobile and was without transportation." On 7 March 1973, Fries applied with the city for leave to file a late claim. The city took no action, and on 23 Arpil 1973 the application was deemed denied. On 3 October 1973 Fries filed his petition in Superior Court.

Fries first contends he complied with the spirit, if not the letter, of the claim-filing statute, when he notified city employees of the incident on the day it occurred. Formal requirements for a claim may be excused when the claimant submits a document reaily

identifiable as a claim. (Foster v. McFadden, 30 Cal.App. 3d 943, 948.) Notification of an incident, however, does not itself show an intention to seek redress, an essential element of any claim. Moreover, Fries reported the incident in the city park, not the city hall where the report might reasonably be expected to receive appropriate attention. Even if the accident report Fries filed with a park employee on 21 February 1973 could be construed as a claim, it too was not filed within the 100-day period.

Fries contends the city is estopped to raise the bar of the claim-filing statute because city employees who were told of the incident failed to advise him to file a claim. Estoppel may be allowed where a claimant has been misled by governmental agents with respect to procedural requirements of the claims statute. (McLaughlin v. Superior Court, 29 Cal.App. 3d 35, 40.) But we know no requirement that governmental agents, particularly those not shown to have legal or claims-related duties, must take affirmative action to inform a potential claimant of claim-filing requirements. Fries could not reasonably expect a karate instructor to advise him of his rights and duties incident to a potential tort claim.

Fries next contends he made a sufficient showing of mistake, inadvertence, surprise, or excusable neglect to warrant relief from the claim-filing statutes.

Although discretion to grant or deny relief under the tort claims statutes lies in the trial court, we must review the denial of relief in the light of the remedial purpose of the statute and the modern trend of judicial decision that resolves doubts in favor of relief unless forbidden by statute. (County of Santa Clara v. Superior Court, 4 Cal.3d 545, 552; Viles v. State of California, 66 Cal.2d 24, 28-29.) That examination persuades us the trial court did not abuse its discretion in denying relief. The basis of Fries' petition for relief was his ignorance of the 100-day claim-filing limitation, a basis that does not legally justify delay. (See Tammen v. County of San Diego, 66 Cal.2d 468, 476.) Nor do his affidavits establish a causal relationship between his injuries and his failure to seek prompt formal redress of his claim.

Finally, Fries contends the claim-filing statute violates constitutional guarantees of due process and equal protection of the laws. (See Turner v. Staggs, Nev., 510 P.2d 879; Reich v. State Highway Department, 386 Mich. 617, 191 N.W.2d 700.) We reject this oft-raised argument. (Roberts v. State of California, 39 Cal.App.3d 844, 848-850.) The Supreme Court recently had this same contention before it in Whitfield v. Roth, 10 Cal.3d 874, and, although deciding the cause on a different ground, stated "that no arguments or authority have been brought to our attention which would suggest that our decision in

Tammen v. County of San Diego, supra, 66 Cal. 2d 468, 481, upholding the constitutionality of the claims statute, is no longer valid." (10 Cal.3d at 889, fn. 20.)

The judgments are affirmed.

NOT FOR PUBLICATION.

FLEMING, J.

We concur:

ROTH, P.J.

COMPTON, J.

APPENDIX E

OPINION FO COURT OF APPEAL - SIFTON V. COUNTY OF VENTURA.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

DANIEL SIFTON, ERIC SIFTON, and LORI SIFTON, minors, by ELSIE CAROLINE SIFTON and ASHFORD DAVID SIFTON, their Guardians,	) 2d Civil No. 44073
Plaintiffs and Appellants,	)(Ventura Co. Sup. Ct. No. 53783)
vs.	) FILED June 30, 1975
COUNTY OF VENTURA,	
Defendant and Respondent.	

APPEAL from a judgment of the Superior Court of the County of Ventura entered after a demurrer to plaintiffs' second amended complaint had been sustained without leave to amend

in an action to recover damages for wrongful death. Richard C. Heaton, Judge. Judgment affirmed.

West and Girardi and Eric Lawton for Appellants.

Robert C. Haase, Jr., Bodkin, Breslin & Luddy, and Timothy J. Sargent for Respondent.

Plaintiffs, three minor children who by their guardians brought an action for the wrongful death of their parents, appeal from a judgment of dismissal entered after the demurrer of defendant County of Ventura to plaintiffs' second amended complaint was sustained without leave to amend.

The county's demurrer was sustained on the ground that the plaintiffs had failed to allege compliance with the government tort claims statutes (Gov. Code, § 911.2).1/

In their second amended complaint plaintiffs allege that they are minors and that on February 11, 1971, their parents were killed in an accident involving a Ford Mustang automobile operated and maintained by certain defendants and a Honda motorcycle owned and

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1/ All code section references will be to the Government Code unless otherwise specified.

being driven by plaintiffs' father, on which their mother was a passenger. Plaintiffs alleged that "the government entity defendants [the County of Ventura] negligently designed and maintained said roadway described above [the roadway located at the scene of the accident] as to proximately contribute to the accident."

With respect to the filing of a claim with the County of Ventura as required by section 911.2, plaintiffs alleged as follows:

"7. That a claim was filed with the government entity defendants within 100 days of the accrual of the cause of action in that defendants' agents investigated the accident on the day of the accident and that a police report was filed on or about February 22, 1971, and was a matter of public record. That said police report contained all of the information required by Section 910 of the Government Code in that it contained the names and post office address of the Siftons, the date, place and circumstances of the occurrence giving rise to the claim asserted; a general description of the injury, damage, obligation, damage and loss incurred, so far as was known at the time of the report; the area of public property causing the damage, injury and loss, and further that it showed that both decedents were killed, thus establishing the amount of damage caused by the government entity defendants' negligence. That all of this information gave sufficient notice to the government entity defendants of plaintiffs' claim. A copy of said

police report is attached hereto and marked 'Exhibit A' and is incorporated by reference as though fully set forth herein. That said claim has been denied by operation of law.

"8. That a claim was filed by defendant and cross-complainant CURTIS PODRATZ on or about May 21, 1971, with the County Clerk of the County of Ventura. That said claim alleged the same circumstances and facts which are alleged by plaintiffs in this Second Amended Complaint, namely, damages sustained as a proximate result of the negligent design and maintenance of county property. That the Government entity defendants thereby had notice of the facts and circumstances of the incident alleged in this complaint, and had a further opportunity to investigate said incident. That said claim has been denied by operation of law.

"9. That a claim was filed with the Government entity defendants in that defendants agents, the County Coroner of the County of Ventura, made a complete investigation of the circumstances alleged in this complaint on the day of the incident and that a Coroner's Report, Coroner's Register, Summary of investigation, and autopsy report were all filed with the County of Ventura on or about February 12, 1971. That said report contained all of the essential information required by the Government Code, giving the Government entity defendants full and complete notice of the circumstances alleged in this complaint. A copy of said Summary of

Investigation is attached herewith and marked 'Exhibit B' and is incorporated as though fully set forth herein. That said claim was denied by operation of law.

"10. That a complaint was filed within the time allowed following the denial of said claims."

The County of Ventura (hereafter County) demurred to plaintiffs' second amended complaint "on the ground that it fails to state a cause of action." As will be explained, the trial court properly sustained the County's demurrer "on all grounds stated without leave to amend." (Veriddo v. Renaud, 35 Cal.2d 263, 265; C.A. Magistretti Co. v. Merced Irrigation Dist., 27 Cal.App.3d 270, 274-275.)

Plaintiffs do not allege that they personally filed a claim with the County within 100 days of the accrual of the cause of action or that any attempt was made by them to file a late claim pursuant to section 911.4. Plaintiffs' attorney of record, in a declaration filed in this action on October 12, 1973, stated that "the plaintiffs did not comply with the formal requirements of the Government claim statutes." statutes."[2/]

2/ The court may take judicial notice of its own file and matters as to which the court may take judicial notice may render a complaint defective. (Code Civ.Proc., §430.30; Able v. Van Der Zee, 256 Cal.App.2d 728, 734.)

By their complaint plaintiffs seek to rely on a theory of substantial compliance with the government claims statutes by alleging that (1) a police report was filed with respect to the accident which took plaintiffs' parents' lives; (2) defendant Curtis Podratz, the driver of the Ford Mustang involved in the accident, filed a claim with the County on May 21, 1971; and (3) the coroner of Ventura County investigated the accident and a coroner's report, coroner's register, summary of investigation and autopsy report were filed with the County on or about February 12, 1971. On this appeal plaintiffs contend that "the substance of the requirements of the government claim provisions (Govt. Code § 900, et seq) were satisfied in this case." Plaintiffs also contend that "[t]he time for filing . . . [plaintiffs'] claim is tolled during their minority," and that the government claim statutes are "unconstitutional as violative of the due process and equal protection guarantees of the California and U.S. Constitutions."

Section 911.2 provides in pertinent part that a "claim relating to a cause of action for death . . . to person . . . shall be presented . . . not later than the 100th day after the accrual of the cause of action." The requirements of section 911.2 are ameliorated by section 911.4 which provides that where a person has failed to file a claim within the time allowed by section 911.2 he may apply to the applicable government entity for leave to file such a claim "within a reasonable time not to exceed one year after the accrual of the cause

of action." As to minors such as plaintiffs herein, section 911.6 makes it mandatory that the government agency grant an application for leave to file a late claim made pursuant to section 911.4 where the person who sustained the damage or loss "was a minor during all of the time specified in Section 911.2 for the presentation of the claim." Furthermore, where an application for leave to file a claim pursuant to serction 911.4 has been denied, the claimant may seek relief from the superior court pursuant to section 946.6 by petition filed within six months after the application to file a claim has been denied.

In the instant case plaintiffs neither filed a claim pursuant to section 911.2 or an application for leave to file a late claim pursuant to section 911.4, nor petitioned the superior court for relief pursuant to section 946.6. In Ridley v. City etc. of San Francisco, 272 Cal.App.2d 290, the plaintiff minors filed suit against the City and County of San Francisco alleging assault, battery, false arrest and imprisonment by police officers. A summary judgment in favor of defendants was granted when it was revealed that the plaintiffs had filed claims after the 100-day period required by section 911.2 and had failed to file an application for leave to present claims as provided for in Section 911.4. In affirming the judgment, the appellate court stated (272 Cal.App.2d at pp. 292-293): "The 100-day requirement applies to actions for false arrest and imprisonment; and a claim filed late is to be disregarded,

unless the statutory methods of relief are employed. [Citation.]

"When a claim is not filed within that period, application may be made to the public entity for leave to present the claim 'within a reasonable time not to exceed one year.' (Gov. Code, § 911.4.) If such an application is made by a minor, in the absence, at least, of special circumstances, it must be granted. [Citations.] But no such application was made. No reason has been assigned to excuse the failure to file such a claim, nor the failure to apply for such relief; except the postulate that if they had filed, relief was a matter of right, and therefore they did not have to file at all.

"Without a proper filing, and rejection of the claims, no right accrues to seek relief in the courts. . . .

"As indicated above, the filing of a proper claim is a condition precedent to suit. The filing of the lawsuit cannot serve as the condition precedent to its own filing. [Citations.]" (See Billups v. Tiernan, 11 Cal. App.3d 372, 378-379; Los Angeles City Sch. Dist. v. Superior Court, 9 Cal.App.3d 459, 465.)

Plaintiffs contend, however, that the purposes of the claims statutes have been served by the filing of the aforementioned police report, coroner's reports and the claim of defendant Podratz. Sections 910 and 910.2

provide that a claim shall be presented and signed by the claimant or by a person acting "on his behalf." It is clear that the police, the county coroner and defendant Podratz were not persons acting on behalf of plaintiffs. In Roberts v. State of California, 39 Cal.App.3d 844, decedent's wife and children failed to timely file a claim with the state. The trial court granted the petition to file a late claim as to the minor children but denied the petition as to the adult widow. On appeal, the widow contended inter alia "that the intent of the statutes requiring timely notice to be given to the state of a claim against it was fulfilled as to her by the timely notice of claim filed by and on behalf of the decedent's workmen's compensation carrier and his employer." (39 Cal. App.3d at p. 846.) In affirming the judgment, the appellate court stated (39 Cal.App.3d at pp. 847-848): "As to timely filing of claim by the insurance carrier and employer, it is the essence of Mrs. Roberts' argument that the underlying purpose of government claim filing requirements as a prerequisite to litigation are (a) the government entity should have an opportunity to investigate promptly while the evidence and witnesses are available; and (b) the entity, having obtained full information should have an opportunity to settle all other meritorious claims without litigation. (Cf., Viles v. State of California, supra, 66 Cal.2d 32.) If we accept her analysis of the purposes of the statutes involved, it does not follow that the filing of a claim by an insurance carrier and an employer would 'satisfy' such purposes as to Mrs. Roberts,

as she would have us hold. The fact that the state has been put on notice that a workmen's compensation carrier and an employer may sue it alerts the state to possible liability under the Labor Code. But that exposure is different in kind and nature from exposure to a wrongful death action by a wife with all the attendant possibilities of complex litigation and the possibility of extremely high damages if liability is established. The contention overlooks the fact that one of the purposes of the claims statute is to provide opportunity for orderly fiscal planning by advance knowledge of potential claims and to provide opportunity for the entity to rectify promptly a condition that resulted in injury and so prevent further losses. (Cf., 2 Cal.Law Revision Com., Rep. (1959) pp. A-73--A-75; 4 ibid. (1963) pp. 1008-1009.)

"Moreover, while distinguishable on their facts, there are cases which are sufficiently analogous which hold that filing of a claim by one party with respect to a particular prospective cause against a public entity does not serve to relieve another prospective party from so doing. (See, e.g., Petersen v. City of Vallejo (1968) 259 Cal.App.2d 757, 766-768 [66 Cal.Rptr. 776]; Bozaich v. State of California (1973) 32 Cal.App.3d 688, 696-697 [108 Cal.Rptr. 392].) We hold that the trial court did not err under statutory and case law in denying Mrs. Roberts' petition to file a late claim."

In Lewis v. City and County of San Francisco, 21 Cal.App.3d 339, Mrs. Lewis

was injured in a municipal bus accident. Although she filed a claim for damages for her injuries within 100 days of the accident, she died, allegedly as a result of her injuries, 33 months after the accident. No claim for damages for wrongful death was filed with the city and county on behalf of Mrs. Lewis' surviving husband and daughter. When the husband and daughter filed a wrongful death suit, the city and county's demurrer was sustained on the ground that no claim for wrongful death had been filed. In affirming the judgment of dismissal, the appellate court stated as follows (21 Cal.App.3d at p. 341): "Appellants also argue that Mrs. Lewis' filing of her claim for damages for personal injuries put the city fully upon notice, and permitted prompt investigation. Thus, it is argued, the claims requirement was substantially met. But the rule of substantial compliance has been applied only when some claim, even though technically defective, is filed (McGranahan v. Rio Vista etc. Sch. Dist., 224 Cal.App.2d 624, 629 [36 Cal.Rptr. 798]).

"The filing of a wrongful death claim by one heir for herself alone, even though it similarly gives the public body full opportunity to investigate, does not excuse absence of a claim by another heir (Petersen v. City of Vallejo, 259 Cal.App.2d 757, 766-767 [66 Cal.Rptr. 776]). Mere knowledge by the public body of the accident and of the proposed claim is not sufficient (Redwood v. State of California, 177 Cal.App.2d 501, 504 [2 Cal.Rptr. 174] and cases there cited).

"An action for wrongful death is wholly distinct from an action by the decedent, in his lifetime, for the injuries which ultimately cause his death (Marks v. Reissinger, 35 Cal. App. 44, 50-55 [169 P. 243]) . . . . Para. . . . we conclude that, under the authorities, Mrs. Lewis' claim for damages for personal injuries cannot be deemed substantial compliance by her heirs with the claims statute, so as to support this wrongful death action by them."

In the instant case, the coroner's reports and the police report did not give the County notice of plaintiffs' claim. Defendant Podratz' claim for personal injuries and property damage did not give the County notice of plaintiffs' existence, let alone the extent or nature of the damage sustained by plaintiffs.

Plaintiffs filed suit against the County on August 18, 1971, well within one year after the accident. However, section 945.4 bars the maintenance of a suit against a public entity on a cause of action for which a claim is required to be presented pursuant to section 900 et seq. and section 910 et seq. until a written claim has been presented to the public entity and it has either acted upon the claim or the claim has been deemed to have been rejected.

In Stromberg, Inc. v. L.A. County Flood etc. Dist., 270 Cal.App.2d 759, the court held that filing a complaint against a public entity did not constitute the filing of a claim under the government claims statutes, stating therein as

follows (270 Cal.App.2d at pp. 762-763): "The doctrine of substantial compliance has frequently been invoked to validate a claim in fact filed under the claims statute, although incomplete or defective or presented to the wrong agency, where claimant has made a bona fide attempt to comply with the statutory requirements [citations] but we know of no case in which it has been invoked to cure an omission to file a claim. The doctrine of substantial compliance cannot be predicated on a complete failure to comply with the mandates of the claims statute."

Plaintiffs' reliance on Los Angeles City Sch. Dist. v. Superior Court, supra, 9 Cal. App.3d 459, is misplaced. In that case the plaintiff, a minor, sustained injuries on June 3, 1966, while on the premises of San Fernando Valley State College. No claim was filed by plaintiff within the 100-day period following the injury. However, within one year of the injury plaintiff applied to the public entity defendants for leave to present a late claim, which defendants denied. On December 23, 1969, more than three years after the denial of plaintiff's application for leave to present a late claim, plaintiff filed a petition for relief from the provisions of section 945.4 pursuant to section 946.6. Section 946.6 provides that such a petition "shall be filed within six months" after the application to the public entity for leave to file a late claim pursuant to section 911.4 is denied. Accordingly, the issue presented in Los Angeles City Sch. Dist. v. Superior Court, supra, was whether, based on plaintiff's status

as a minor, the superior court had jurisdiction to grant plaintiff's petition for relief where the petition had been filed more than six months af after plaintiff's application for leave to present a late claim had been denied. The appellate Court concluded that the six-month period contained in section 946.6 was tolled during plaintiff's minority by the operation of Code of Civil Procedure section 352 and that, therefore, his petition was timely. (9 Cal.App.3d at p. 463.)

However, in the case presently before this court plaintiffs not only failed to file a claim pursuant to section 911.2 and an application for leave to file a late claim pursuant to section 911.4, but they also did not petition the superior court for relief from the provisions of section 945.4 pursuant to section 946.6. The court in Los Angeles City Sch. Dist. v. Superior Court, supra, emphasized the necessity for compliance with the claims statute before application for relief may be made to the court, stating (9 Cal.App.3d at p. 465): "Plaintiff does not dispute that section 946.6 can only be asserted by a minor, who can satisfy the court that he has complied with those sections dealing with the presentment of claims. (Gov.Code, §§ 910, 911.2, 911.4 and 911.6.) Our courts have so held. Williams v. Los Angeles Met. Transit Authority, supra; Ridley v. City & County of San Francisco (1969) 272 Cal.App.2d 290 [77 Cal.Rptr. 199]; Artukovich v. Astendorf (1942) 21 Cal.2d 329 [131 P.2d 831].)"

Plaintiffs next contend that "[t]he time for filing . . . [plaintiffs'] claim is tolled during their minority." Plaintiffs have cited no cases and we have found none upholding that proposition. Williams v. Los Angeles Met. Transit Authority, 68 Cal. 2d 599, upon which plaintiffs seek to rely, did hold that Code of Civil Procedure section 352 tolls the statute of limitations with respect to a suit by a minor against a public entity provided the minor has complied with applicable claims procedures. Thus, the Supreme Court stated as follows (68 Cal. 2d at pp. 604-6050: "Although defendant relies on Artukovich v. Astendorf (1942) 21 Cal. 2d 329 [131 P. 2d 831] that case does not apply to the situation before us. There the plaintiff contended that his minority excused him from the requirement of former Political Code Section 4075, which provided that an injured party file a claim before bringing suit against a public entity. Noting that the statute did not explicitly excuse minors from compliance with the claims procedures, we held: 'Thus there are statutory provisions extending special consideration to minors with respect to the time within which certain proceedings must be commenced ([e.g.,] Code Civ. Proc., § . . . 352 . . .) but the special consideration extended is expressly limited to the proceedings therein mentioned. We find no similar provisions extending special consideration to minors in statutes prescribing the time within which claims must be filed . . . .'

(21 Cal. 2d at pp. 333-334.)"[3/] And in Moyer v. Hook, 10 Cal. App. 3d 491, at page 493, the court stated: "The code section relied upon by appellant (Code Civ. Proc., § 352) tolls, during certain disabilities, only the running of the period for filing 'an action.' It does not apply to the filing of a claim against a public entity (Artukovich v. Astendorf, 21 Cal. 2d 329 [131 P. 2d 831]). It is quite true that an 'action against a public entity . . . for which a claim is required to be presented' (Code Civ. Proc., § 342) is 'mentioned' in chapter three of that code, and thus is subject to section 352 (Williams v. Los Angeles Met. Transit Authority, 68 Cal. 2d 599, 602 [68 Cal. Rptr. 297, 440 P. 2d 497]). But Williams deals only with the 'action' which must be commenced within a limited time after rejection of a claim which itself was timely (Gov. Code, § 945.6). The Williams claim was timely filed (1. 601). Williams does not extend the time for filing a claim, but only

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3/ As noted hereinabove, while the court in Los Angeles City Sch. Dist. v. Superior Court, supra, 9 Cal. App. 3d 459, held that Code of Civil Procedure section 352 operated to toll the six-month period contained in section 946.6 during a plaintiff's minority, the court also stated that nothing in that section abrogated the necessity for a minor's compliance with applicable claims statutes prior to seeking relief in the court.

that for commencement of an action by the filing of the complaint. The decision does not disapprove Artukovich, but specifically recognizes its rule. The distinction between action and claim is emphasized by the statement (p. 608) that '[b]ecause plaintiff must timely comply with the claims procedures (Artukovich v. Astendorf, supra, 21 Cal. 2d 329) the public entity will be afforded the opportunity to investigate promptly the minor's claim. . . .' If there be anomaly in tolling of only the statute of limitations and not the running of the time to file claim, the concurring opinion in Williams makes clear that it was considered by the court in its holding. [Fn. omitted.]"

Finally, it should be noted that in 1970 the Legislature amended Code of Civil Procedure section 352 by adding subsection (b) thereto (Stats. 1970, ch. 104, p. 323, § 1) which amendment became operative on January 1, 1971, prior to the accrual of plaintiffs' cause of action alleged herein. As amended, Code of Civil Procedure section 352 provides in pertinent part as follows: "(a) If a person entitled to bring an action, mentioned in chapter three of this title, be, at the time the cause of action accrued . . . 1. Under the age of minority . . . the time of such disability is not a part of the time limited for the commencement of the action.

"(b) This section does not apply to an action against a public entity or public employee upon a cause of action for which a claim is

required to be presented in accordance with Chapter 1 (commencing with Section 900) or Chapter 2 (commencing with Section 910) of Part 3, or Chapter 3 (commencing with Section 950) of Part 4, of Division 3.6 of Title 1 of the Government Code. This subdivision shall not apply to any claim presented to a public entity prior to January 1, 1971."4/

4/ The Law Revision Commission's comment on the 1970 amendment to Code of Civil Procedure action 352 makes clear that by virtue of the amendment the statute of limitations with respect to suits against a public agency for which a claim must be filed is no longer tolled during the claimant's minority. The comment is as follows: "Subdivision (b) has been added so that Section 352, which operates to toll the statute of limitations for minors, insane persons, and prisoners, will not apply to the causes of action against a public entity or public employee described in this subdivision. Such actions are governed by the period of limitations specified in subdivision (a) of Section 945.6 of the Government Code. To safeguard the minor or incompetent from an inadvertent reliance on the tolling provision of Section 352, notice of rejection of his claim in the form provided in Government Code Section 913 is required to be given by the public entity. If notice is not given the claimant has two years from the accrual of his cause of action in which to sue. See Government Code Section 945.6(a)."

Under the cases noted hereinabove the time during which a person must file a claim against a government agency has never been tolled during a claimant's minority. By virtue of the 1970 amendment to Code of Civil Procedure section 352 the time within which a person may bring an action against a public agency after having properly filed a claim with that agency is no longer tolled during the claimant's minority. 5/

5/

Plaintiffs herein rely on Wozniak v. Peninsula Hospital, 1 Cal.App. 3d 716, and Whitfield v. Roth, 10 Cal. 3d 874, claiming that courts "in fact, have tolled the period for filing of government claims for minors in certain situations." Each of those cases involved a minor's claim for medical malpractice against a public entity. The issue in each case was the date of the accrual of the cause of action, which in malpractice cases is the date of discovery of the injury and its negligent cause. The date of the accrual of the cause of action is, of course, crucial in determining when a claim must be filed with the involved public entity. However, each of the cases acknowledged that a minor is bound by the claims statutes. (Wozniak v. Peninsula Hospital, supra, 1 Cal.App. 3d 716, at p. 723; Whitfield v. Roth, supra, 10 Cal. 3d 874, at p. 883.)

Plaintiffs argue that "[t]he California notice of claim statutes (Government Code § 900 et seq.) are unconstitutional as violative of the due process and equal protection guarantees of the California and U.S. Constitutions." In Hom v. Chico Unified Sch. Dist., 254 Cal. App. 2d 335, the court addressed itself to the question of whether the government tort claims statutes are unconstitutional as applied to minors. In holding the statutory scheme to be constitutional, the court stated (254 Cal.App. 2d at pp. 338-339): "The Muskopf [Muskopf v. Corning Hospital Dist., 55 Cal. 2d 211] decision established no doctrine depriving the Legislature of procedural control in granting and withholding consent to suit. (Thelander v. Superior Court, 58 Cal. 2d 811, 814 [26 Cal.Rptr. 643, 376 P. 2d 571]; Flournoy v. State of California, 230 Cal.App. 2d 520, 525 [41 Cal.Rptr. 190].) The legislature may constitutionally alter, modify or eliminate common law rules governing public as well as private tort liability, subject only to constitutional restrictions against arbitrary classification. (Flournoy v. State of California, supra, 230 Cal.App. 2d at p. 524.) The procedurally favored position in which claims statutes place public entities is not unconstitutionally discriminatory. (Dias v. Eden Township Hospital Dist., 57 Cal. 2d 502, 504 [20 Cal. Rptr. 630, 370 P. 2d 334].) On the assumption that the disabilities and handicaps which occasionally characterize minors should evoke legislation ameliorating the position of minors, the Legislature has supplied that amelioration.

"Minors and adults are equally subject to the 100-day limitation on the presentation of personal injury claims. (Gov. Code, § 911.2.) Presentation and rejection of a claim is a prerequisite to suit, whether by a minor or adult. (§ 945.4.) Both minors and adults may escape the 100-day limitation by applying to the entity for leave to present a late claim, the application to be made within a reasonable time, not to exceed one year after the accrual of the cause of action. (§ 911.4.) From that point onward, the minor receives more favored statutory treatment. An adult who was not physically or mentally incapacitated during the 100-day period, must show that his failure to act within that period was occasioned by mistake, inadvertence, surprise or excusable neglect and that the public entity was not prejudiced; while the minor need show only that he was a minor during the 100-day claim period. (§ 911.6.) The same distinction in treatment appears in the statute providing for judicial permission for late claim filing. (Present § 946.6; former § 912, repealed in 1965; see Church v. County of Humboldt, 248 Cal.App.2d 855, 857 [57 Cal.Rptr. 79].)

"In effect, Government Code sections 911.6 and 946.6 grant minors a period of claim filing consisting of 100 days plus a reasonable time, not exceeding one year, for filing an application for relief. If, within the extended period fixed by section 911.4, the minor files an application, relief is mandatory. (Tammen v. County of San Diego, 66 Cal.2d 468, 479-480

[58 Cal.Rptr. 249, 426 P.2d 753].) Thus the legislature has established a classification supplying more lenient claim filing conditions for minors and compensating for the disadvantages which sometimes -- but not always -- characterize minority status. (See Tammen v. County of San Diego, supra, at pp. 479-480; Frost v. State of California, 247 Cal.App.2d 378, 387 [55 Cal.Rptr. 652].)"

In Tammen v. County of San Diego, 66 Cal.2d 468, the Supreme Court stated at page 481: "Does the statutory requirement for presenting claims to a public entity before suit may be brought violate the constitutional guarantees of due process and equal protection of the laws? No. In Dias v. Eden Township Hospital Dist., supra, 57 Cal.2d 502, 504, we said: 'Public agencies, generally speaking, afford a proper subject for legislative classification.' These constitutional arguments were also rejected in Wadley v. County of Los Angeles, 205 Cal.App.2d 668, 672-673 [23 Cal.Rptr. 154]." (See Bozaich v. State of California, 32 Cal.App.3d 688, 699; Lewis v. City and County of San Francisco, supra, 21 Cal.App.3d 339, 340-341.)

Plaintiffs rely primarily upon cases decided by the Michigan and Nevada Supreme Courts in support of their position. (Reich v. State Highway Department, 386 Mich. 617, 194 N.W.2d 700; Turner v. Staggs, 89 Nev. 230, 510 P.2d 879.) Those cases were analyzed by the court in Roberts v. State of California, supra, 39 Cal.App.3d 844, at pages 848-850, wherein

the court stated as follows: "The contention that the claims statutes violate the equal protection of laws provisions of the United States Constitution rests upon the assertion that by barring a lawsuit to a person who has not first filed a claim with a public entity within 100 days, while such a provision does not exist as a bar to other prospective defendants, an arbitrary or special class of wrongdoers has been established. It is argued that the California Legislature had intended, by its enactments permitting public entities to be sued, to place them on the same footing as private tortfeasors and that the 100-day limitation is an unreasonable classification and defeats the legislative intention. It is claimed that the 100-day notice requirement is a special statute of limitations arbitrarily barring actions by victims of governmental negligence while the victims of private negligence have one year in which to bring their actions. (Code Civ. Proc., § 340.) Plaintiff's counsel relies upon cases in Nevada and Michigan in which it has been held that since legislation in those states had the principal goal of putting public entities on an 'equal footing' with private tortfeasors, any different treatment was an unreasonable classification. (Turner v. Staggs (1973) 89 Nev. 230 [510 P.2d 879]; Reich v. State Highway Department (1972) 386 Mich. 617 [194 N.W.2d 700]; cf., Krause v. State (1971) 28 Ohio App.2d 1 [57 Ohio Ops.2d 1, 274 N.E. 2d 321].)

"There is a basic distinction, however, between statutes that aim at placing or actually

do place the state or other public entities on an equal basis with private tortfeasors and our California statutes.

"Our statutes were enacted after the decision of the California Supreme Court in Muskopf v. Corning Hospital Dist. (1961) 55 Cal.2d 211 [11 Cal.Rptr. 89, 359 P.2d 457] which held that common law governmental immunity must be discarded and indicated a disposition to treat all tortfeasors, public and private, alike insofar as basic liability was concerned. The legislative response to Muskopf achieved a result entirely different from that which plaintiff urges should have been effected. It enacted a series of statutes to provide, in effect, that there is governmental immunity except for the very specific areas in which the statutes allowed suits. (See, Gov. Code, § 815; Nestle v. City of Santa Monica (1972) 6 Cal.3d 920, 931-932 [101 Cal.Rptr. 568, 496 P.2d 480].) Since the enactment of the statutes in question, courts have uniformly upheld them against constitutional attack and particularly against a classification challenge. (Tammen v. County of San Diego, supra, 66 Cal.2d 481; see also, Bozaich v. State of California, supra, 32 Cal.App.3d p. 699; Hom v. Chico Unified Sch. Dist. (1967) 254 Cal.App. §d 335, 338 [61 Cal.Rptr. 920].)

"The argument in plaintiff's closing brief that 'when the state undertakes to divest itself from the cloak of immunity it must stand on an equal basis with other similarly situated

tortfeasors' would have merit only if the California Legislature so provided, or if some legislative action indicated that the reasons for the claims statute no longer had compelling force. But it did not. The fact that other states moved in that direction is irrelevant. We are in agreement with the decisions just cited upholding the constitutionality of the time limitation provisions of the claims statutes involved herein."

The judgment of dismissal is affirmed.

FORD, P.J.

We concur:

ALLPORT, J.

POTTER, J.